



Suppliers' Meeting on Migrant Workers Issues in Malaysia

Singapore, November 23, 2009

SUMMARY

To better understand the supplier's perspective on the issues of migrant workers in Malaysia, the Fair Labor Association (FLA) held a supplier's meeting in Singapore as a follow-up to its multi-stakeholder roundtable discussion held in Malaysia on August 5, 2009. Participants representing nine suppliers attended the half-day meeting. The objective of the meeting was to have suppliers dialogue on migrant workers issues in a safe meeting space, thus augmenting the multi-stakeholder roundtable discussions.

Participants focused on issues of migrant workers in four priority areas: (1) recruitment of migrant workers; (2) freedom of movement; (3) retrenchment process; and (4) overtime. The first three priority issues were the same as those highlighted at the August multi-stakeholder roundtable meeting; overtime was added as a new priority discussed by suppliers.

The Recruitment Process

Suppliers discussed the issue of recruitment fees and workers' indebtedness. Although they are sympathetic to the workers' plight, supplier representatives mentioned that the Government-to-Government Memorandums-of-Understanding ("G2G MoUs") governing the issue of recruitment and recruitment fees are not publicly transparent. They would like to have more information on how much money workers have to pay recruitment agencies in order to better understand their financial burden.

A complicating factor is that each migrant-supplying country has a different G2G MoU with the Government of Malaysia, and they contain different recruitment fee structures. For example, Bangladeshi workers pay much higher recruitment fees than other migrant workers and they are also subject to a special approval process that forces suppliers to work through agents. Some countries do fix legal recruitment fees and are transparent about it but it is not the case for all the countries migrant workers come from.

Suppliers Proposal

Participants agreed that a system for listing reliable agents and providing greater information and transparency about recruitment processes and fees would be invaluable. Information on G2G MoUs and a best practice guide on how an employer should perform due diligence in the migrant worker recruitment process would be useful.

Freedom of Movement - Passports

1. I-Card. Malaysian police often ask migrant workers for their passports when they are outside the factory premises. I-Cards or identifications issued by the government, copies of passports, and even factory identification documents are not accepted as substitutes. If the police recognized workers' I-Cards as valid travel documents, this would solve part of the passport issues faced by workers.

However, the issuance of I-Cards does not help resolve the issues faced by Bangladeshi migrant workers because by formal policy the Malaysian government does not issue I-Cards to Bangladeshi migrant workers. Recently, the government has put a stop on new immigrants entering from Bangladesh.

2. FLA Compliance Benchmark. A supplier raised a concern about the way FLA Compliance Benchmark F.15 dealt with the retention of workers passports by employers.

F.15 Personal Worker Identification and Other Documents

Workers shall retain possession or control of their passports, identity papers, travel documents or any other personal legal documents. Employers shall not retain any such documents to restrict workers' access to them for any reason whatsoever, including in order to ensure that workers shall remain in employment in the factory. Employers may obtain copies of original documents for record-keeping purposes.

The supplier raised the issue that the benchmark does not take into account the safekeeping of workers' documents. Workers sometimes fear losing their passport and request employers to hold on to their document for secure storage. Suppliers recommended the focus of the benchmark should be on accessibility. Passports, for example, could be kept in a safe box by factory management, workers representatives or dormitory guards, but should be accessible

anytime. The procedure for getting access to their passports should be clearly communicated to workers.

[NOTE] FLA's Compliance Benchmark F.16 does cover the issue of accessibility.

F. 16 Storage for Employee Documents

Employers shall provide, at employee request, secure storage for employee documents. Such storage shall be freely accessible to workers.

Suppliers Proposal

Suppliers would like the FLA to use its multi-stakeholder platform to approach the Malaysian government and push for I-Cards to be accepted as valid identification documents. In addition, they would like the FLA to engage in a dialogue with the Malaysian Government regarding discrimination against Bangladeshi workers.

Retrenchment Process

The question was raised about who is responsible for paying a worker's return air ticket when the worker resigns before the end of the employment contract. Even if it is specified in the contract that workers bear the costs if they terminate early, some stakeholders consider this a case of forced labor (forcing workers to work a few more months in order to pay for their tickets).

Suppliers Proposal

Suppliers feel that the decision should be made on a case-by-case basis because there are many scenarios and reasons behind early termination. For example, it may be due to disciplinary or medical reasons. However, suppliers feel that buyers have adopted a very strong position that all costs and responsibility should be born by the employer, no matter the reason behind the early contract termination. Suppliers would like more consultation and consensus seeking on this issue.

Overtime

Suppliers discussed the issue of the labor shortage in Malaysia and the related issue of overtime (OT). Employers mentioned that workers usually want to work OT and that the FLA Workplace Code of Conduct should allow for greater flexibility.

Suppliers mentioned that the 12 hours OT per week benchmark in the FLA Workplace Code of Conduct does not fit the Malaysian context. National law allows 104 hours OT per month or 4 hours per day. They did not think it is realistic to expect a Malaysian factory to respect the 12 hours OT per week as they risk losing workers who could work more OT in another factory.

Suppliers Proposal

Suppliers note that it is the ambition of workers and not poverty that drives them to work longer OT. In this regard, they suggest introducing an OT premium as a good system for making OT more acceptable to stakeholders and to reward workers for working OT. They also argued that raising the OT benchmark could be part of the strategy to reduce recruitment of migrant workers and thus reduce the issue of recruitment fees.

CONCLUSION

As the discussion around recruitment, passports, retrenchment, and overtime issues illustrate, suppliers feel that they are unfairly being asked to take responsibility for problems whose root causes lie in a host of external factors, including transparency issues with regard to G2G MoUs, the local legal system and buyers' demands.

Suppliers are seeking a partnership approach to resolve these issues. Currently, suppliers feel that brands are imposing a top down approach to issues surrounding migrant workers, including laying the sole burden of responsibility squarely on suppliers.